

Exhibit 12

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3
4 _____

5 In Re:)
6 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD) PROMESA TITLE III
7 FOR PUERTO RICO) Case No.

8 as representative of) 17-BK-03283 (LTS)
9 THE COMMONWEALTH OF PUERTO RICO, et. al,)
10 Debtors.)

11 _____)
12 In Re:)
13 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD) PROMESA Title III
14 FOR PUERTO RICO) Case No.

15 as representative of) 17-BK-03566 (LTS)
16 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
17 GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,)
18 Debtor.)
19 _____)

20 CONFIDENTIAL
21 VIDEOTAPED DEPOSITION UNDER ORAL EXAMINATION OF
22 JORDAN MIKES, ESQ.

23 March 5, 2020

24
25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO.
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00356 (LTS)
5 and)
6 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
7 OF ALL TITLE III DEBTORS (OTHER THAN COFINA))
8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT IM, et al.,)
14 Defendants.)
15 _____
16 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
17 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO.
18 ACTING BY AND THROUGH ITS MEMBERS,) 19-00357 (LTS)
19 and
20 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
21 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
22 as co-trustees of)
23 THE EMPLOYERS RETIREMENT SYSTEM OF THE)
24 GOVERNMENT OF PUERTO RICO,)
25 Plaintiff,)
26 vs.)
27 STOEVER GLASS & CO., et al.,)
28 Defendants.)
29 _____

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1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO.
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00359 (LTS)
5 and)
6 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
7 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT 1H-78H,)
14 Defendants)
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1 _____
2 THE SPECIAL CLAIMS COMMITTEE OF THE FINNCIAL)
3 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,) ADV. PROC. NO.
4 ACTING BY AND THROUGH ITS MEMBERS,) 19-00361 (LTS)
5 and)
6 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
7 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
8 as co-trustees of)
9 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
10 GOVERNMENT OF PUERTO RICO,)
11 Plaintiff,)
12 vs.)
13 DEFENDANT 1G-50G, et. al.,)
14 Defendants.)
15 _____)
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1 _____
2 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD)
3 FOR PUERTO RICO,) ADV. PROC. NO.
4 as representative of) 19-00366 (LTS)
5 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT)
6 OF THE COMMONWEALTH OF PUERTO RICO,)
7 and)
8 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
9 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
10 as Section 926 trustee of)
11 THE COMMONWEALTH OF PUERTO RICO,)
12 Plaintiffs,)
13 vs.)
14 ANDALUSIAN GLOBAL DESIGNATED)
15 ACTIVITY COMPANY, et. al,)
16 Defendants.)
17 _____)
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1 _____
2 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD)
3 FOR PUERTO RICO) ADV. PROC. NO.
4 as representative of) 19-00367 (LTS)
5 EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT)
6 OF THE COMMONWEALTH OF PUERTO RICO,)
7 and)
8 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS)
9 OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)
10 as Section 926 trustee of)
11 THE COMMONWEALTH OF PUERTO RICO,)
12 Plaintiffs,)
13 vs.)
14 GLENDON OPPORTUNITIES FUND, L.P., et. al,)
15 Defendants.)
16 _____)

17
18 TRANSCRIPT of the videotaped deposition
19 of the witness, called for Oral Examination in the
20 above-captioned matter, said deposition being taken
21 by and before MICHAEL FRIEDMAN, a Notary Public and
22 Certified Court Reporter of the State of New Jersey,
23 at PROSKAUER ROSE, 11 Times Square, New York, New
24 York, on March 5, 2020, commencing at approximately
25 9:00 in the morning.

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1 THE VIDEOGRAPHER: Please stand by.
2 This begins Media unit 1 in Volume
3 1 for the video deposition of Mr. Jordan
4 Mikes, In Re: The Financial Oversight
5 and Management Board for Puerto Rico, et
6 al., versus Defendant 1G-50G, et al.,
7 defendants, in the United States
8 District Court for the District of
9 Puerto Rico, Case No: 17-BK-3283.

10 Today's date is March 5th, 2020.

11 The time is approximately 9:09 a.m.

12 This deposition is being taken at
13 Proskauer Rose, 11 Times Square, New
14 York, New York 10036.

15 My name is Steve Decaneo. I'm the
16 legal video specialist.

17 The court reporter today is Mike
18 Friedman. And we're both from Gregory
19 Edwards, LLC.

20 Attorney appearances will be noted
21 on the stenographic record.

22 At this time, will the court
23 reporter please swear in the witness so
24 we may begin.

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1 J O R D A N M I K E S , E S Q . ,
2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:

4

5

6

7 EXAMINATION BY MS. ROOT:

8 Q Good morning.

9 Could you please state your full
10 name for the record?

11 A Sure.

12 Jordan Mikes.

13 Q Okay. Mr. Mikes, I'm Melissa Root.
14 I'm one of the lawyers that represents the
15 Retiree Committee.

16 I will be taking your deposition
17 today.

18 Do you understand that you're here
19 today to testify as a witness in litigation
20 pending between ERS -- certain ERS
21 bondholders, the Retiree Committee, the
22 Creditors Committee, the Financial Oversight
23 and Management Board and the Special Claims
24 Committee?

25 A Yes, I do.

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1 Q Do you believe a list of
2 individuals who may have discoverable
3 information about Oaktree's differences and
4 counterclaims, that are set forth in
5 paragraph 11, is a complete and accurate
6 list?

7 A Yes.

8 Q And do you know why you were not
9 included in that list?

10 A I was not included in that list
11 because I was looped in by Emily, so anything
12 I had would have been too late to be relevant
13 and also would have been duplicative of
14 Emily.

15 Additionally, my function at the
16 time that Emily was here was more of a -- a
17 legal function, so it would be atypical to
18 include our lawyers in the discovery.

19 Also, I was not involved in the
20 Puerto Rico ERS investment in 2014 through
21 2017.

22 Q When did you first become involved
23 in the Puerto Rico ERS investment?

24 A The first meaningful -- what I
25 remember -- the most -- so I may have been

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1 cc'd in passing on various counsel-related
2 type e-mails prior to, but the -- the
3 principal day was that Monday prior to
4 Thanksgiving, that's when I fully got engaged
5 in this -- this -- this matter.

6 Q Do you know if anyone at Oaktree
7 Capital Management has reached out to
8 Ms. Stephens to discuss the litigation since
9 her departure from Oaktree Capital Management
10 in late November 2019?

11 A No one has reached out to her since
12 her departure, no.

13 Q You can put that exhibit aside.
14 Earlier, Mr. Mikes, when you were
15 talking about your two meetings with
16 Mr. O'Leary, I believe your testimony was
17 that he said he had not focused on the issue
18 of whether the ERS -- whether ERS had the
19 authority to issue the bonds until the
20 present litigation.

21 Is that correct?

22 A Yes.

23 Q Did he give you any indication of
24 whether he had considered but perhaps not
25 focused on the issue of whether ERS had the

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1 authority to issue the bonds at some point
2 prior to when -- 2017?

3 MR. PAPEZ: Object to form but you
4 can go ahead.

5 A No. In fact, when he said focused,
6 given the context of the discussion, he was
7 pretty clear he meant the first he had heard
8 of it was in that litigation.

9 But more specifically, and very
10 strongly, he emphasized, prior to making the
11 investment decisions, there was absolutely no
12 discussion of the validity of the bonds, the
13 Enabling Act or anything like that, on the
14 basis that the bonds had been trading for a
15 very long period of time and it's
16 inconsistent with our approach to investing,
17 to invest in that scenario.

18 And so that issue was raised in --
19 in -- by litigation. He may have been
20 referring to the notice of validity.

21 But it's -- it's -- it's clear that
22 he was referring to the 2019 period of time.

23 Q And it's your understanding,
24 Mr. O'Leary was not focused on the issue of
25 whether ERS had the authority to issue these

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1 bonds before 2019?

2 MR. PAPEZ: Object to form.

3 You can answer.

4 A He was not aware, and that's been
5 consistent -- he was not aware of that issue
6 prior to 2019, and that's consistently been
7 reinforced throughout my discussions with
8 Bob.

9 Q Other than Mr. O'Leary,
10 Mr. Bennett, Mr. Brown and counsel, did you
11 speak with anyone else to prepare for today's
12 deposition?

13 A No.

14 Q I want to talk a little bit about
15 Oaktree Capital Management's process for
16 evaluating new investment.

17 And I'm going to start by asking a
18 general question, just hope to move through
19 this quickly, but if I need to break it down,
20 I will.

21 So going back to the nine funds
22 that were identified in Footnote 2 of what's
23 been marked as Exhibit 1, who makes decisions
24 for each of those funds?

25 A The process for those is, there's

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1 Go ahead.

2 A We bought in the market, so it
3 would have been through a dealer.

4 These were -- these were registered
5 bonds that traded, so we would have purchased
6 in the secondary market.

7 Q Okay. Does Oaktree have an
8 understanding of whether when it purchased
9 ERS bonds in the open market, it received an
10 assignment of claims from the prior holders
11 of those bonds?

12 A When you trade bonds, the
13 documentation is such that you acquire rates
14 and the typical obligations and rights that
15 go along with the ownership of the bonds, but
16 there was no separate transfer of claims or
17 anything that was broken all separate and
18 apart from the bonds.

19 Q Okay. We talked earlier, Mr. Mikes
20 about the documents that Oaktree reviewed in
21 its diligence before purchasing bonds in May
22 of 2014.

23 Do you recall that testimony?

24 A Yes.

25 Q And do you recall giving me a

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1 complete list of the documents that Oaktree
2 reviewed in May of 2014?

3 A Yes.

4 Q And those documents did not include
5 the ERS Enabling Act or any amendments
6 thereto.

7 Is that correct?

8 A That's correct.

9 Q Do you know when the first time was
10 that anyone at Oaktree reviewed the ERS
11 Enabling Act or any amendments thereto?

12 A I know the first time I reviewed
13 it, and that would have been November 2017,
14 just in my personal capacity, no one at
15 Oaktree reviewed it before 2019. And I don't
16 know definitively that Emily or -- that Emily
17 reviewed it in 2019, although I would imagine
18 she did review it in 2019.

19 Q Okay. I'm not sure I understand
20 your answer.

21 You said that you would have
22 reviewed it in November of 2017.

23 A Sorry, 2019, November of 2019.
24 That was a mistake.

25 Q So the first time you reviewed the

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1 Enabling Act was November 2019.

2 Putting you aside, do you know the
3 first time which anyone at Oaktree reviewed
4 the ERS Enabling Act or any amendment
5 thereto?

6 A I have no evidence that they were
7 reviewed.

8 But what I said is that we got a
9 notice of validity in 2019 and that would
10 have been flagged to Emily, so she may have
11 reviewed it then. But there was no review of
12 it prior to the notice of validity.

13 Q How is it that you know that no one
14 at Oaktree reviewed the Enabling Act prior to
15 November of 2019?

16 A Because I discussed it with Bob
17 O'Leary, and I discussed it with Dave Brown
18 and Adam Bennett, and none of them had
19 reviewed it prior to that time period.

20 And, in fact, neither -- none of
21 them had reviewed it subsequent to that time
22 period and specifically mentioned it has
23 never been discussed during the pre-2019
24 period of time.

25 Q Did anyone call Mr. Kreger to ask

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1 him if he reviewed the Enabling Act at any
2 time prior to November 2019?

3 A No, but Mike -- Mike Kreger's
4 responsibilities, as a relatively junior
5 analyst, would have been to report up to Raj
6 Shourie and Bob O'Leary, certainly in his
7 investment committee memo.

8 And as I said, I talked to Bob
9 and -- and this was never discussed.

10 And I talked to Dave Brown and it
11 was never discussed.

12 And I guess the other point I would
13 make is, when we're reviewing bonds, we don't
14 look at validity when they've been trading
15 for eight-plus years.

16 And so there is -- had Mike Kreger
17 actually reviewed the Enabling Act, it would
18 have been because there was an issue, it
19 would have most certainly been discussed with
20 the team.

21 Q Are you aware -- aware that in
22 November 2017 there was a pleading filed in
23 the litigation in which AAFAF, A-A-F-A-F,
24 contended that the ERS bonds were issued
25 without proper authority?

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1 MR. PAPEZ: Objection to the form
2 of the question. Vague.

3 A I am now aware in my preparation
4 for this deposition that AAFAF did that.

5 Q Do you know whether that court
6 filing was provided to anyone at Oaktree in
7 November 2017?

8 A In discussions with the team
9 members, they never saw any notice of that
10 AAFAF filing.

11 And specifically, there would be,
12 in the ordinary course, no reason it would
13 have because it was an unrelated matter
14 and -- and BONY would not -- would not have
15 sent that to us necessarily, so it doesn't
16 surprise me that we never saw it.

17 Q Okay. And so your testimony as the
18 30(b) (6) witness for Oaktree is that Oaktree
19 did not review the ERS Enabling Act or its
20 amendments until November 2019?

21 A Yes, my -- that's correct.

22 Q Did Oaktree review at any time Act
23 116?

24 A We rely on counsel, and I can't
25 personally comment on Act 116.